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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,357	01/09/2002	Kauno Alastalo	3696-0180P	1586

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EXAMINER

BROWN, JENNINE M

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 07/03/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/890,357

Applicant(s)

ALASTALO ET AL.

Examiner

Jennine M. Brown

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claims <sup>3</sup>4, 6, 15-17 and 22 include a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation where the claim also recites "most preferably" which is the narrower statement of the range/limitation.

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Examiner is ignoring the narrower range/limitation of each of these claims and would suggest adding these narrower limitations as dependent claims.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 7, the phrase "or the like" renders the claim indefinite because the claim includes elements not actually disclosed, those encompassed by "or the like", thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

Claim 9 recites the limitation "said first reaction mixture or said waxed first reaction mixture" in claim 1. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 13, the preamble needs to be corrected to add the term "system" after catalyst since none of the previous claims are drawn to a catalyst.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 4, 6-10, 14-17 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caselli (US 5455289).

Caselli teaches a process for making the catalyst component (col. 7, l. 10-41), process for adding stabilizers and additives to polyolefins by using Ziegler-Natta based catalysts (col. 4, l. 13-25), magnesium dichloride (col. 4, l. 44-50) with aluminum alkyl compounds (col. 4, l. 60-65; col. 6, l. 10-27) and electron donor (col. 4, l. 66 – col. 7, l. 28) and silica based support (col. 6, l. 33-39). Caselli teaches oils, waxes and paraffins are commonly used as stabilizers and additives for polyolefins (col. 2, l. 66 – col. 3, l. 61). Caselli teaches that olefins are ethylene monomer and C<sub>3</sub>-C<sub>10</sub> alpha olefins (col. 2, l. 40-49) and that polymerization is carried out between 40-160 °C and atmospheric pressure or higher (col. 6, l. 57-59).

Caselli does not specifically teach using a second or third aluminum alkyl compound but if the compound was not meant to be deactivated so that the catalyst would not be poisoned, it would have been obvious to one of ordinary skill in the art to add a second or third aluminum based catalyst to keep the catalyst activity up so that

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polymerization does not decrease over time due to catalyst poisoning. Also note that in more than one of the dependent claims, the first, second and third aluminum compounds are be the same.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 3, 6, 15 and 22 include a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation where the claim also recites "most preferably" which is the narrower statement of the range/limitation. Examiner is ignoring the narrower range/limitation of each of these claims and would suggest adding these narrower limitations as dependent claims.

Claims 1-3, 6, 14, 15, 20, 21, 22, 23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of U.S. Patent No. 6576710 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because each of the components of the

catalyst system and process of contacting said components to polymerize alpha olefins have been previously claimed.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennine M. Brown whose telephone number is (703) 305-0435. The examiner can normally be reached on M-F 8:00 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on (703) 308-3823. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 879-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

jmb  
June 30, 2003

  
Mark L. Bell  
Supervisory Patent Examiner  
Technology Center 1700